

DEFENSE

Research and Development

**Memorandum of Agreement
Between the
UNITED STATES OF AMERICA
and INDIA**

Signed at Washington and New Delhi
December 6, 2005 and January 9, 2006

with

Annexes



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

INDIA

Defense: Research and Development

*Memorandum of agreement signed at
Washington and New Delhi
December 6, 2005 and January 9, 2006;
Entered into force January 9, 2006.
With annexes.*

MEMORANDUM OF AGREEMENT (MOA)
BETWEEN
THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA
AND
THE MINISTRY OF DEFENCE
OF THE REPUBLIC OF INDIA
FOR
RESEARCH, DEVELOPMENT, TESTING, AND EVALUATION
PROJECTS

(Short Title: U.S. DoD-IN MoD RDT&E MOA)

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PREAMBLE

The Department of Defense of the United States of America (U.S. DoD) and the Ministry of Defence of the Republic of India (IN MOD), hereinafter referred to as the “Parties”:

Having a common interest in defense;

Recognizing the benefits to be obtained from standardization, rationalization, and interoperability of military equipment;

Seeking to make the best use of their respective research and technology development capacities, eliminate unnecessary duplication of work, encourage interoperability, and obtain the most efficient and cost effective results through cooperation in Research, Development, Test, and Evaluation Projects; and

Desiring to improve their respective conventional defense capabilities through the application of emerging technology;

Have agreed as follows:

ARTICLE I
DEFINITIONS

For the purposes of this Agreement and any of its specific Project Agreements (PAs), the following definitions shall apply:

Classified Information	Official information that requires protection in the interests of national security and is so designated by the application of a security classification marking. It may be in oral, visual, magnetic, or documentary form, or in the form of equipment or technology.
Contract	Any mutually binding legal relationship under national law that obligates a Contractor to furnish supplies or services, and obligates one or both of the Parties to pay for them.
Contracting	The obtaining of supplies or services by Contract from sources outside the government organizations of the Parties. Contracting includes description (but not determination) of supplies and services required, solicitation and selection of sources, preparation and award of Contracts, and all phases of Contract administration.
Contracting Agency	The entity within the government organization of a Party that has authority to enter into, administer, and/or terminate Contracts.
Contracting Officer	A person representing a Contracting Agency of a Party who has the authority to enter into, administer, and/or terminate Contracts.
Contractor	Any entity awarded a Contract by a Party's Contracting Agency.
Contractor Support Personnel	Persons specifically identified in support contracts who provide administrative, managerial, scientific, or technical support services to a Party under a Contract with that Party that prohibits using information received under the contract for any other purpose other than those identified in this Agreement or a related PA.

Controlled Unclassified Information	Unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. Whether the information is provided or generated under this Agreement, the information shall be marked to identify its "in confidence" nature. U.S. export controlled technical data shall be marked as "International Traffic in Arms Regulations (ITAR)-Controlled". Indian export controlled technical data shall be marked as RESTRICTED GOI Information. It could include information that has been declassified, but remains controlled.
Cooperative Project Personnel (CPP)	Military members or civilian employees of a Party assigned to the joint program office or the other Party's facilities who perform managerial, engineering, technical, administrative, Contracting, logistics, financial, planning, or other functions in furtherance of a PA.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of any Party.
Designated Security Authority (DSA)	The security office approved by national authorities to be responsible for the security aspects of this Agreement.
Financial Costs	PA costs met with monetary contributions.
Non-Financial Costs	PA costs met with non-monetary contributions.
Party	A signatory to this Agreement represented by its military and civilian personnel. Contractors and Contractor Support Personnel will not be representatives of a Party under this Agreement.
Patent	Legal protection of the right to exclude others from making, using, or selling an invention. The term refers to any and all patents including, but not limited to, patents of implementation, improvement, or addition, petty patents, utility models, appearance design Patents, registered designs, and inventor certificates or like statutory protections as well as divisions, reissues, continuations, renewals, and extensions of any of these.
Project Agreement (PA)	An implementing agreement, added after this Agreement has entered into force, that specifically details the terms of collaboration on a specific project.
Project Equipment	Any material, equipment, end item, subsystem, component, special tooling or test equipment jointly acquired or provided for use in the performance of a Project.

Project Background Information	Information not generated in the performance of a specific PA.
Project Foreground Information	Information generated in the performance of a specific PA.
Project Information	Any information provided to, generated in, or used in the performance of a PA regardless of form or type, including, but not limited to, that of a scientific, technical, business, or financial nature, and also including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether or not subject to copyright, Patent, or other legal protection.
Project Invention	Any invention or discovery formulated or made (conceived or first actually reduced to practice) in the course of work performed under a PA. The term "first actually reduced to practice" means the first demonstration sufficient to establish to one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.
Third Party	A government other than the government of a Party and any person or other entity whose government is not the government of a Party.

ARTICLE II

OBJECTIVES

2.1. The objective of this Agreement is to define and establish the general terms and conditions that shall apply to the initiation, conduct, and management of projects detailed in separate PAs between representatives authorized in accordance with national procedures of the Parties. These PAs shall be entered into pursuant to this Agreement and shall incorporate by reference the terms of this Agreement.

2.2. Detailed terms and conditions of each individual PA shall be consistent with this Agreement. Each PA shall include specific provisions concerning the objectives, scope of work, sharing of work, management structure, financial arrangements and classification for the applicable PA consistent with the model set forth in Annex A.

ARTICLE III

SCOPE OF WORK

3.1. The scope of work for this Agreement shall encompass collaboration in research, development, testing, and evaluation potentially leading to new or improved military capability. PAs may encompass one or more of the following activities: basic research, applied research, advanced technology development, concept of operation studies and analyses, advanced concept technology demonstrations, system prototypes, system development and demonstration (engineering and manufacturing development), developmental test and evaluation of system subsystem efforts, and evolutionary acquisition/spiral development efforts associated with low rate initial production or production programs.

3.2. Information exchanges specifically and only for the purpose of harmonizing the Parties' requirements for formulating, developing, and negotiating PAs are permitted under this Agreement. If information is exchanged but no PA is signed, or before a PA is signed, the receiving Party shall use such exchanged information only for information and evaluation purposes and shall not disclose or transfer such exchanged information to a Third Party.

3.3. This Agreement does not preclude entering into any other agreement in the area of research and development.

ARTICLE IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1. The Director for International Cooperation, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (or his successor in the event of reorganization) is designated U.S. Agreement Director (U.S. AD). The Chief Controller of Research & Development (TMS), Defence Research and Development Organisation (or his/her successor in the event of reorganization) is designated the India Agreement Director (IN AD). The ADs shall be responsible for:

- 4.1.1. monitoring implementation of this Agreement and exercising executive-level oversight;
- 4.1.2. monitoring the overall use and effectiveness of the Agreement;
- 4.1.3. recommending amendments to this Agreement to the Parties; and
- 4.1.4. resolving issues brought forth by the Management Agents.

4.2. The appropriate U.S. Military Department Acquisition Executive or Defense Agency Director, or his/her designee, is designated U.S. Management Agent (U.S. MA) for those projects within his/her respective Military Department or Defense Agency. The Director, International Cooperation, Defence Research and Development Organisation Headquarters, Ministry of Defence, or his/her designee, is designated India Management Agent (IN MA). The MAs shall be responsible for:

- 4.2.1. entering into PAs in accordance with this Agreement and national policies and procedures;
- 4.2.2. establishing a management structure for each PA considering its scope and the requirement for a Steering Committee (SC);
- 4.2.3. appointing Project Officers (POs) when deemed necessary, and, as appropriate, SC members;
- 4.2.4. giving administrative direction to appropriate SCs, if established, or POs appointed to their projects;
- 4.2.5. designating a point of contact for exchange of information to harmonize requirements for the development and negotiation of potential PAs, in accordance with paragraph 3.2 of Article III (Scope of Work); and
- 4.2.6. resolving issues brought forth by the SC or, if no SC is established, by the POs.

4.3. If a SC is established under a particular PA, it shall be responsible for:

- 4.3.1. providing policy and management direction to the POs during PA execution;
- 4.3.2. monitoring overall implementation, including technical, cost, and schedule performance against requirements;
- 4.3.3. approving plans for transfers of Project Equipment or disposal of jointly acquired Project Equipment, in accordance with Article VII;
- 4.3.4. resolving issues brought forth by the POs;
- 4.3.5. maintaining oversight of the security aspects of a project;
- 4.3.6. approving assignment of personnel working on a project at the other Party's facilities in accordance with the provisions set out in Appendix (1) to Annex A;
- 4.3.7. appointing a project security officer;
- 4.3.8. establishing the detailed financial procedures of a PA in the event that one Party contracts on behalf of the other Party or on behalf of both Parties; and
- 4.3.9. reporting status and activity of assigned PAs on an annual basis to the MAs and ADs.

4.4. In accordance with the terms of the PA, the POs shall have primary responsibility for effective implementation and efficient management and direction of their assigned PA including technical, cost, and schedule performance against requirements. Additionally, the POs shall have the responsibilities under paragraph 4.3. if no SC is established for their PA, except that the MAs shall be responsible for resolving issues brought forth by the POs. The POs shall also maintain a list of all Project Equipment transferred by either of the Parties.

4.5. The Parties may place CPPs in a joint project office (JPO) or in the facilities of the other Party. Terms and conditions for CPPs are set out in Annex B (Cooperative Project Personnel).

4.6. The MAs, SCs and POs will meet as required, alternately in the United States and India. The Chairman for each meeting shall be the senior official of the host Party. During such meetings, all decisions will be made unanimously with each Party having one vote. In the event that the Parties are unable to reach a timely decision on an issue, each Party shall refer the issue to its higher authority for resolution. Approved PAs shall continue to be implemented without interruption under the direction of the POs while an issue is being resolved by higher authority.

ARTICLE V
FINANCIAL PROVISIONS

5.1. Each Party shall contribute its equitable share of the full Financial and Non-financial Costs of each PA, including overhead costs, administrative costs and cost of claims, and shall receive an equitable share of the results of each PA.

5.2. The financial and non-financial arrangements for a PA, including the total cost of the PA and each Party's share of the total cost, shall be included in the PA.

5.3. For each PA, the POs will be responsible for establishing the detailed financial management procedures under which the project will operate. Where necessary, these procedures will be detailed in a financial management procedures document (FMPD) proposed by the POs and subject to the approval of the SC, if one is established.

5.4. Both Parties shall perform, or have performed, their tasks and shall use their best efforts to perform the tasks within the cost estimates specified in each PA. Both Parties shall bear the full costs they incur for performing, managing, and administering their own activities under this Agreement and participation in each PA, including their share of the costs of any Contracts under paragraph 5.10.

5.5. The following costs shall be borne entirely by the Party incurring the costs or on whose behalf the costs are incurred:

5.5.1. costs associated with any unique national requirements identified by a Party; and

5.5.2. any other costs not expressly stated as shared costs or any other costs outside the scope of this Agreement and its PAs.

5.6. For PAs with shared costs that involve the establishment of a JPO with CPP assignments to the other Party's facilities or the JPO, the PA shall address the financial and non-financial contributions required for JPO administration and associated support services including, but not limited to, JPO costs of travel incurred in support of project efforts, JPO training costs, Contract award, Contract administration, office space, security services, information technology services, communications services, and supplies.

5.7. In addition to the shared costs of JPO administration and associated support services costs described in paragraph 5.6. the cost of CPP in the JPO or assigned to the other Party's facilities shall be borne as follows:

5.7.1. The host Party shall bear the costs of all pay and allowances of Host Party personnel in the JPO.

5.7.2. The parent Party shall bear the following CPP-related costs:

- 5.7.2.1. All pay and allowances (including accommodations and expenses).
- 5.7.2.2. Transportation of the CPP, the CPP's dependents, and their personal property to the place of assignment in the host Party's nation for the CPP's commencement of a tour of duty in the JPO or field activity, and return transportation of the foregoing from the place of assignment in the host Party's nation upon completion or termination of the tour of duty.
- 5.7.2.3. Compensation for loss of, or damage to, the personal property of CPP or the CPP's dependents, subject to the parent Party's laws and regulations.
- 5.7.2.4. Preparation and shipment of remains and funeral expenses in the event of the death of the CPP or the CPP's dependents.

5.8. For PAs without shared costs that involve the assignment of one Party's CPP to the facilities of the other Party, the Parties shall bear the costs as set forth in paragraph 5.7. except that the host Party shall also bear the assignment-related administrative and support costs such as office space, security services, information technology services, communications services, and supplies. The parent Party will bear the cost of CPP travel incurred in support of a PA and CPP-related training.

5.9. A Party shall promptly notify the other Party if available funds will not be adequate to fulfill its obligations as agreed under a PA, or if it appears that the cost estimates in a PA will be exceeded, and both Parties shall immediately consult with a view toward continuation on a modified basis.

5.10. If one Party contracts on behalf of the other Party or on behalf of both Parties, each Party shall make funds available in the amounts and at the times set forth in the estimated schedule for monetary contributions, as specified in the FMPD.

5.11. The Parties recognize that it may become necessary for one Party to incur contractual or other obligations for the benefit of the other Party prior to receipt of the other Party's funds. In the event that one Party incurs such obligations, the other Party shall make such funds available in such amounts and at such times as may be required by the Contract or other obligation, and shall pay any damages and costs that may accrue from the performance or cancellation of the Contract or other obligation in advance of the time such payments, damages, or costs are due.

5.12. Each Party shall be responsible for the audit of its activities or its Contractors' activities pursuant to a PA. A Party's audits will be in accordance with its own national practices and the FMPD. For PA efforts where funds are transferred between the Parties, the receiving Party shall be responsible for the internal audit regarding administration of the other Party's funds in accordance with the receiving Party's national practices. The receiving Party shall promptly make audit reports of such funds available to the other Party.

ARTICLE VI

CONTRACTUAL PROVISIONS

6.1. If either Party determines that Contracting is necessary to fulfill its obligations under the scope of work of a PA, that Party shall contract in accordance with its respective national laws, regulations and procedures.

6.2. When one Party individually contracts to carry out a task under a PA, it shall be solely responsible for its own contracting, and the other Party shall not be subject to any liability arising from such Contracts without its written consent.

6.3. The Parties may also determine that one Party's Contracting Agency should enter into a Contract to fulfill their joint PA obligations or the PA obligations of the non-contracting Party. That Contracting Agency shall contract for both Parties in accordance with its national laws, regulations, and procedures. If necessary to meet the requirements of a PA, the U.S. DoD's Contracting Officer or the IN MOD Contracting Agency shall seek deviations from national regulations and procedures wherever possible. Sources from both Parties' industries shall be allowed to compete on an equal basis for Contracts. The U.S. DoD Contracting Officer or the IN MOD Contracting Agency shall be the exclusive source for providing contractual direction and instructions to Contractors for Contracts awarded by that Party.

6.4. For all Contracting activities performed by either Party, the POs shall, upon request, be provided a copy of all statements of work prior to the development of solicitations to ensure that they are consistent with the provisions of this Agreement and the applicable PA.

6.5. For all Contracting activities performed by either Party, each Party's Contracting Agency shall negotiate to obtain the rights to use and disclose Project Information required by Article VIII (Disclosure and Use of Project Information). Each Party's Contracting Agency shall insert into its prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this Agreement, including Article VIII (Disclosure and Use of Project Information), Article IX (Controlled Unclassified Information), Article XI (Security), Article XII (Third Party Sales and Transfers), and Article XVII (Amendment, Termination, Entry into Force, and Duration), and suitable provisions to ensure compliance with the Parties' respective export control laws and export control implementing regulations. During the Contracting process, each Party's Contracting Officer shall advise prospective Contractors of their obligation to notify the Contracting Agency immediately if they are subject to any license or agreement that will restrict that Party's freedom to disclose Project Information or permit its use. The Contracting Officer shall also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in such restrictions.

6.6. The transfer of export-controlled information furnished by one Party shall be authorized by the Government of the furnishing Party only to those Contractors of the other Party who shall limit the end use of the Information received for the sole purpose of furthering the purposes authorized

under this Agreement. The Parties shall establish legal arrangements with their Contractors to ensure that their Contractors do not retransfer or otherwise use export-controlled information for any purpose other than authorized under this Agreement. Such legal arrangements shall also provide that the Contractor shall not retransfer the export-controlled information to another Contractor without the consent of the Government of the furnishing Party.

6.7. In the event a Party's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by Article VIII (Disclosure and Use of Project Information), or is notified by Contractors or prospective Contractors of any restrictions on the disclosure and use of Project Information, that Party's PO shall notify the other Party's PO of the restriction(s).

6.8. Each Party's PO shall promptly advise the other Party's PO of any cost growth, schedule delay, or performance problems of any Contractor for which its Contracting Agency is responsible.

6.9. No requirement shall be imposed by either Party for workshare or other industrial or commercial compensation in connection with this Agreement that is not in accordance with this Agreement or its PAs.

ARTICLE VII

PROJECT EQUIPMENT

7.1. Each Party may provide Project Equipment identified as being necessary for executing a specific PA to the other Party. Such Project Equipment shall remain the property of the providing Party. A list of all Project Equipment provided by one Party to another Party shall be developed, maintained, approved, and amended by the POs and shall be included in an Appendix to each PA (see Annex C to this Agreement).

7.2. The receiving Party shall maintain any such Project Equipment in good order, repair, and operable condition. Unless the providing Party has authorized the Project Equipment to be expended or otherwise consumed without reimbursement to the providing Party, the receiving Party shall return the Project Equipment to the providing Party in as good condition as received, normal wear and tear excepted, or return the Project Equipment and pay the cost to restore it. If the Project Equipment is damaged beyond economical repair, the receiving Party shall return the Project Equipment to the providing Party (unless otherwise specified in writing by the providing Party) and pay its replacement value as computed pursuant to the providing Party's national laws and regulations. If the Project Equipment is lost while in the custody of the receiving Party, the receiving Party shall issue a certificate of loss to the providing Party and pay the replacement value as computed pursuant to the providing Party's national laws and regulations. If known at the time of entry into force, the replacement value of the Project Equipment shall be specified in the PA.

7.3. All Project Equipment that is transferred shall be used by the receiving Party only for the purposes of carrying out the activities under a PA. In addition, in accordance with Article XII (Third Party Sales and Transfers), Project Equipment shall not be re-transferred to a Third Party without the prior written consent of the providing Party.

7.4. The providing Party shall deliver Project Equipment to the receiving Party at a mutually agreed location. Possession of the Project Equipment shall pass from the providing Party to the receiving Party at the time of receipt of the Project Equipment. Any further transportation is the responsibility of the receiving Party.

7.5. Project Equipment transferred to one Party under a PA shall be returned to the providing Party prior to the termination or expiration of that PA.

7.6. Any Project Equipment that is jointly acquired on behalf of both Parties for use under a PA shall be disposed of during the PA or when the PA ceases, as agreed or directed by the Steering Committee or, if no Steering Committee is established, the POs.

7.7. Disposal of jointly acquired Project Equipment may include a transfer of the interest of one Party in the Project Equipment to the other Party, or the sale of such Equipment to a Third Party in accordance with Article XII (Third Party Sales and Transfers). The Parties shall share the

consideration from jointly acquired Project Equipment transferred or sold to a Third Party in the same ratio as costs are shared under the applicable PA in a manner they determine to be fair at the time.

ARTICLE VIII

DISCLOSURE AND USE OF PROJECT INFORMATION

8.1. General

- 8.1.1. Both Parties recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out each PA. The Parties intend to acquire sufficient Project Information and rights to use such information to enable collaboration on basic, exploratory, and advanced technologies the maturation of which may lead to the development of technologically superior systems. The nature and amount of Project Information to be acquired shall be consistent with the objectives and scope stated in the PAs to this Agreement. Transfer of such Information to Contractors shall be consistent with each Party's applicable respective export control laws and export control regulations.
- 8.1.2. As set forth in paragraph 3.2. the Parties may exchange information under this Agreement for the purpose of harmonizing the Parties' requirements for formulating, developing, and negotiating PAs. The Party furnishing such Information will clearly indicate to the receiving Party that it is furnishing such Information for this purpose. Until a PA is signed, or if no PA is signed, a Party may use Information received under paragraph 3.2. only for information and evaluation purposes and shall not disclose or transfer such Information to a Third Party.

8.2. Government Project Foreground Information

- 8.2.1. Disclosure: Project Foreground Information generated in whole or in part by a Party's military or civilian employees shall be disclosed without charge to both Parties.
- 8.2.2. Use: Each Party may use all Government Project Foreground Information without charge for its Defense Purposes. The Party generating Government Project Foreground Information shall retain its rights, if any, of use thereto. Any sale or other transfer to a Third Party shall be subject to the provisions of Article XII (Third Party Sales and Transfers) of this Agreement.

8.3. Government Project Background Information

- 8.3.1. Disclosure: Each Party, upon request, shall disclose to the other Party any relevant Government Project Background Information generated by its military or civilian employees, provided that:

- 8.3.1.1. such Government Project Background Information is necessary to or useful in a specific PA. The Party in possession of the information shall determine whether it is "necessary to" or "useful in" the specific PA;
 - 8.3.1.2. such Government Project Background Information may be made available without incurring liability to holders of proprietary rights;
 - 8.3.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Party; and
 - 8.3.1.4. any disclosure or transfer of such Government Project Background Information to Contractors is consistent with the furnishing Party's export control laws and export control regulations.
 - 8.3.2. Use: Government Project Background Information disclosed by one Party to the other may be used without charge by the other Party only for the project purposes of the particular PA for which it is necessary or useful. The furnishing Party shall retain its rights with respect to such Government Project Background Information.
- 8.4. Contractor Project Foreground Information
- 8.4.1. Disclosure: Project Foreground Information generated and delivered by Contractors shall be disclosed without charge to both Parties.
 - 8.4.2. Use: Each Party may use without charge for its Defense Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the other Party. The Party whose Contractors generate and deliver Contractor Project Foreground Information shall retain its rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Project Foreground Information shall be subject to the provisions of Article XII (Third Party Sales and Transfers) of this Agreement.
- 8.5. Contractor Project Background Information
- 8.5.1. Disclosure: Any Contractor Project Background Information, (including information subject to proprietary rights) generated and delivered by Contractors shall be made available to the other Party provided the following conditions are met:
 - 8.5.1.1. such Contractor Project Background Information is necessary to or useful in a specific PA. The Party in possession of the information shall determine whether it is "necessary to" or "useful in" the specific PA;

- 8.5.1.2. such Contractor Project Background Information may be made available without incurring liability to holders of proprietary rights;
 - 8.5.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Party; and
 - 8.5.14. any disclosure or transfer of such Contractor Project Background Information to Contractors is consistent with the furnishing Party's export control laws and export control regulations.
 - 8.5.2. Use: Contractor Project Background Information furnished by one Party's Contractors and disclosed to the other Party may be used without charge by the other Party only for the project purposes of the particular PA for which it is necessary or useful, and it may also be subject to further restrictions by holders of proprietary rights. The furnishing Party shall retain its rights with respect to such Contractor Project Background Information.
- 8.6. Alternative uses of Project Information
- 8.6.1. The prior written consent of each Party's Government shall be required for the use of any Project Foreground Information for purposes other than those provided for in this Agreement or any PA under it.
 - 8.6.2. Any Project Background Information provided by one Party shall be used by the other Party only for the purposes set forth in this Agreement, unless otherwise consented to in writing by the providing Party's Government.
- 8.7. Proprietary Project Information
- 8.7.1. All unclassified Project Information subject to proprietary rights interests shall be identified and marked, and it shall be handled in accordance with Article IX (Controlled Unclassified Information). All Classified Project Information subject to proprietary rights shall be so identified and marked, and handled in accordance with Article XI (Security).
- 8.8. Patents
- 8.8.1. Where a Party owns title to a Project Invention, or has the right to receive title to a Project Invention, that Party shall consult with the other Party regarding the filing of a Patent application for such Project Invention. The Party that has or receives title to such Project Invention shall, in other countries, file, cause to be filed, or provide the other Party with the opportunity to file on behalf of the Party holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a Party having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Party shall notify the other Party of that decision and permit the other Party to continue the prosecution.

- 8.8.2. The other Party shall be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.
- 8.8.3. The other Party shall acquire a non-exclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the Party, throughout the world for Defense Purposes, any Project Invention.
- 8.8.4. Patent Applications that contain Classified Information to be filed under this Agreement or any PA under it shall be protected and safeguarded in accordance with the procedures set forth in Article XI (Security).
- 8.8.5. Each Party shall notify the other Party of any Patent infringement claims made in its territory arising in the course of work performed under any PA of this Agreement. Insofar as possible, the other Party shall provide information available to it that may assist in defending the claim. Each Party shall be responsible for handling all Patent infringement claims made in its territory, and shall consult with the other Party during the handling, and prior to any settlement, of such claims. The Parties shall share the costs of resolving Patent infringement claims in a manner they determine to be fair at the time the Patent infringement claim is resolved. The Parties shall, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the project of any invention covered by a Patent issued by their respective countries.

ARTICLE IX

CONTROLLED UNCLASSIFIED INFORMATION

9.1. Except as otherwise provided in this Agreement or as authorized in writing by the originating Party, Controlled Unclassified Information provided or generated pursuant to this Agreement and any of its PAs shall be controlled as follows:

- 9.1.1. Such information shall be used only for the purposes authorized for use of Project Information as specified in Article VIII (Disclosure and Use of Project Information).
- 9.1.2. Access to such information shall be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1., and shall be subject to the provisions of Article XII (Third Party Sales and Transfers).
- 9.1.3. Each Party shall take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 9.1.2., unless the originating Party consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification shall be given to the originating Party.

9.2. To assist in providing the appropriate controls, the originating Party shall ensure that Controlled Unclassified Information is appropriately marked. The Parties shall decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings shall be defined in the Project Security Instruction.

9.3. Controlled Unclassified Information provided or generated pursuant to this Agreement and any of its PAs shall be handled in a manner that ensures control as provided for in paragraph 9.1.

9.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Parties shall ensure that the Contractors are legally bound to control such information in accordance with the provisions of this Article.

ARTICLE X

VISITS TO ESTABLISHMENTS

10.1. Each Party shall permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Party or by employees of the other Party's Contractor(s), provided that the visit is authorized by both Parties and the employees have all necessary and appropriate security clearances and a need-to-know.

10.2. All visiting personnel shall be required to comply with security regulations of the host Party. Any information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be subject to the provisions of this Agreement.

10.3. Requests for visits by personnel of one Party to a facility of the other Party shall be coordinated through official channels, and shall conform to the established visit procedures of the host country. Requests for visits shall bear the name of this Agreement and the applicable PA.

10.4. Lists of personnel of each Party required to visit, on a continuing basis, facilities of the other Party shall be submitted through official channels in accordance with recurring international visit procedures.

ARTICLE XI

SECURITY

11.1. All Classified Information provided or generated pursuant to this Agreement and any of its PAs shall be stored, handled, transmitted, and safeguarded in accordance with the Agreement between the Government of the United States of America and the Government of the Republic of India Concerning Security Measures for the Protection of Classified Military Information (Security Agreement), dated January 17, 2002.

11.2. Classified Information shall be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Parties. Such information shall bear the level of classification and denote the country of origin, the conditions of release, and the fact that the information relates to this Agreement and the applicable PA.

11.3. Each Party shall take all lawful steps available to it to ensure that information provided or generated pursuant to this Agreement and any of its PAs is protected from further disclosure, except as permitted by paragraph 11.4., unless the other Party consents in writing to such disclosure. Accordingly, each Party shall ensure that:

11.3.1. The recipient shall not release the Classified Information to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating Party in accordance with the procedures set forth in Article XII (Third Party Sales and Transfers).

11.3.2. The recipient shall not use the Classified Information for purposes other than those provided for in this Agreement and its PAs.

11.3.3. The recipient shall comply with any distribution and access restrictions on information that is provided under this Agreement and any of its Annexes.

11.4. The Parties shall investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this Agreement has been lost or disclosed to unauthorized persons or other entities. Each Party shall also promptly and fully inform the other Party of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

11.5. The Designated Security Authority (DSA) of a Party that awards a classified Contract under this Agreement shall assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with the Security Agreement its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or subcontractor of any Classified Information provided or generated under this Agreement, the recipient Party shall:

- 11.5.1. Ensure that such Contractor, prospective Contractor, or subcontractor and its facility(ies) has the capability to protect the Classified Information adequately.
- 11.5.2. Grant a security clearance to the facility(ies), if appropriate.
- 11.5.3. Grant a security clearance for all personnel whose duties require access to the Classified Information, if appropriate.
- 11.5.4. Ensure that all persons having access to the information are informed of their responsibilities to protect the information in accordance with national security laws and regulations, and the provisions of this Agreement.
- 11.5.5. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the Project.

11.6. The DSAs will carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.

11.7. When a PA contains provisions for the exchange of Classified Information, the POs shall prepare a Project Security Instruction (PSI) and a Classification Guide (CG) for the PA. The PSI and the CG shall describe the methods by which Project Information and material shall be classified, marked, used, transmitted, and safeguarded. The PSI and CG shall be developed by the POs within three months after the PA enters into force. They shall be reviewed and forwarded to the appropriate DSA and shall be applicable to all government and Contractor personnel participating in the Project. The CG shall be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The PSI and the CG shall be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

11.8. Contractors, prospective Contractors, or subcontractors who are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this Agreement and its PAs only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party shall not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Party shall be consulted for approval prior to permitting such access.

11.9. For any facility wherein Classified Information is to be used, the responsible Party or Contractor shall approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information pertaining to this Agreement and its PAs. These officials shall be responsible for limiting access to Classified Information involved in this Agreement and its PAs to those persons who have been properly approved for access and have a need-to-know.

11.10. Each Party shall ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the information in order to participate in this Agreement or any of its PAs.

11.11. Information exchanged under this Agreement will be at the unclassified level. Information exchanged pursuant to a PA may, on a case-by-case basis, be classified at a higher level if such exchange is sufficiently justified, and processed and approved in accordance with the national disclosure policies and procedures of the Parties. Each Party shall ensure that access to Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in a PA. The existence of this Agreement is unclassified and its contents are unclassified.

ARTICLE XII

THIRD PARTY SALES AND TRANSFERS

12.1. Except to the extent permitted in paragraph 12.2., the Parties shall not sell, transfer title to, disclose, or transfer possession of Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) or jointly acquired or produced Project Equipment to any Third Party without the prior written consent of the Government of the other Party. Furthermore, neither Party shall permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the Government of the other Party. Such consent shall not be given unless the government of the intended recipient agrees in writing with the Parties that it shall:

12.1.1. not retransfer, or permit the further retransfer of, any equipment or information provided; and

12.1.2. use, or permit the use of, the equipment or information provided only for the purposes specified by the Parties.

12.2. Each Party shall retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information that is:

12.2.1. generated solely by either Party or that Party's Contractors in the performance of that Party's work allocation under a PA or Article III (Scope of Work); and

12.2.2. which does not include any Project Foreground Information or Project Background Information of the other Party and whose generation, test, or evaluation has not relied on the use of Project Equipment of the other Party.

12.3. In the event questions arise whether the Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) that a Party intends to sell, transfer title to, disclose, or transfer possession of to a Third Party is within the scope of paragraph 12.2., the matter shall be brought to the immediate attention of the other Party's PO. The Parties shall resolve the matter prior to any sale or other transfer of such Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) to a Third Party.

12.4. A Party shall not sell, transfer title to, disclose, or transfer possession of Project Equipment or Project Background Information provided by the other Party, to any Third Party without the prior written consent of the Government of the Party that provided such equipment or information. The providing Party's Government shall be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers.

ARTICLE XIII

LIABILITY AND CLAIMS

13.1. For liability arising out of or in connection with activities undertaken in the performance of official duty in the execution and for the benefit of this Agreement or any PA, the following provisions shall apply,

13.2. Claims against any Party or its personnel shall be dealt with in accordance with the terms of other relevant bilateral treaties and agreements.

13.3. When other bilateral treaties and agreements do not apply, the following provisions shall apply:

- 13.3.1. With the exception of claims for loss of or damage to Project Equipment under Article VII (Project Equipment), each Party waives all claims against the other Party for injury to or death of its military or civilian personnel and for damage to or loss of its property caused by such personnel of that other Party. Employees and agents of Contractors are not be considered to be civilian personnel employed by a Party for the purposes of this paragraph.
- 13.3.2. Claims from third parties for injury, death, damage, or loss of any kind caused by one or both of the Parties' personnel shall be processed by the most appropriate Party, as determined by the Parties. Any costs determined to be owed the claimant shall be borne by the Parties in the same ratio as they share the financial and non-financial costs of the PA to which the claim is related.

13.4. In the case of damage to Project Equipment jointly acquired by the Parties under a PA, where the cost of making good such damage is not recoverable from other persons, such cost shall be borne by the Parties in the same ratio as they share the financial and non-financial costs of that PA.

13.5. Claims arising under any Contract awarded pursuant to Article VI (Contracting Provisions) of this Agreement shall be resolved in accordance with the provisions of the Contract.

ARTICLE XIV

CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

14.1. Customs duties, import and export taxes, and similar charges shall be administered in accordance with each Party's respective laws and regulations. Insofar as existing national laws and regulations permit, the Parties shall endeavor to ensure that such readily identifiable duties, taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under each PA under this Agreement.

14.2. Each Party shall use its best efforts to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Party in whose country they are levied shall bear such costs.

ARTICLE XV

SETTLEMENT OF DISPUTES

15.1. Disputes between the Parties arising under or relating to this Agreement and its PAs shall be resolved only by consultation between the Parties and shall not be referred to a national court, an international tribunal, or to any other person or entity for settlement.

ARTICLE XVI

LANGUAGE

16.1. The working language for this Agreement and its PAs as well as all actions thereunder shall be the English language.

ARTICLE XVII

AMENDMENT, TERMINATION, ENTRY INTO FORCE, AND DURATION

17.1. All activities of the Parties under this Agreement shall be carried out in accordance with their national laws, including their export control laws and regulations. The obligations of the Parties shall be subject to the availability of funds for such purposes.

17.2. In the event of a conflict between an Article of this Agreement and any Annex to this Agreement, the Article shall control.

17.3. In the event of a conflict between the terms of this Agreement and any PA hereunder, the Agreement shall govern.

17.4. This Agreement and its PAs may be amended by the mutual written consent of the Parties. Annexes to the PAs may be amended by the SC or, if there is no SC, the POs, except for Appendix (1) to Annex A (Assignment of Cooperative Project Personnel) to the Model Project Agreement, which may be changed or amended only by the Parties.

17.5. This Agreement and its PAs may be terminated at any time by the written consent of the Parties. In the event both Parties consent to terminate this Agreement, or decide to terminate any PA, the Parties shall consult prior to the date of termination to ensure termination on the most economical and equitable terms.

17.6. Either Party may terminate this Agreement or any of its PAs upon 90 days written notice of its intent to terminate to the other Party. Such notice shall be the subject of immediate consultation by the ADs to decide upon the appropriate course of action to conclude the activities under this Agreement and the subject of immediate consultation by the MAs to discuss how to conclude any terminated PAs. In the event of such termination, the following rules apply:

17.6.1. The terminating Party shall continue participation, financial or otherwise, in all PAs subject to the notice of termination, up to the effective date of termination.

17.6.2. Except as to Contracts awarded on behalf of both Parties, each Party shall be responsible for its own Project-related costs associated with termination of the Project. For Contracts awarded on behalf of both Parties, the terminating Party shall pay all Contract modification and termination costs that would not otherwise have been incurred but for the decision to terminate. However, in no event shall a terminating Party's total financial contribution, including contract termination costs, exceed that Party's total financial contribution for the PA being terminated.

17.6.3. All Project Information and rights therein received under the provisions of this Agreement or PAs prior to termination of the Agreement or its PAs shall be retained by the Parties, subject to the provisions of this Agreement and its PAs.

- 17.6.4. If requested by the other Party, the terminating Party may continue to administer the Project Contract(s) that it awarded on behalf of the other Party on a reimbursable basis.
- 17.6.5. Specific PA termination provisions consistent with this article may be established in the PA.

17.7. The respective rights and obligations of the Parties regarding Article VII (Project Equipment), Article VIII (Disclosure and Use of Project Information), Article IX (Controlled Unclassified Information), Article XI (Security), Article XII (Third Party Sales and Transfers), Article XIII (Liability and Claims) and this Article XVII (Amendment, Termination, Entry Into Force, and Duration) shall continue notwithstanding termination or expiration of this Agreement and any of its PAs.

17.8. This Agreement, which consists of seventeen (17) Articles and three Annexes, shall enter into force upon signature by both Parties and shall remain in force for 10 years unless terminated by either Party. It may be extended by written agreement of the Parties. All PAs shall terminate upon the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their governments, have signed this Agreement.

DONE, in two originals, in the English language.

FOR THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA



Signature

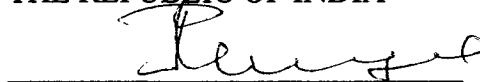
Donald H. Rumsfeld
Name

Secretary of Defense
Title

DEC 6 2005
Date

Washington D.C.
Location

FOR THE MINISTRY OF DEFENCE OF
THE REPUBLIC OF INDIA



Signature

Pranab Mukherjee
Name

Defence Minister
Title

Jan 9 2006
Date

New Delhi
Location

ANNEX A
MODEL PROJECT AGREEMENT

TO THE
U.S. DOD - INDIA MOD RESEARCH, DEVELOPMENT, TESTING, AND EVALUATION
PROJECTS AGREEMENT

DATED

PROJECT AGREEMENT NO. _____ *

between

THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA

and

THE MINISTRY OF DEFENCE OF THE REPUBLIC OF INDIA

CONCERNING.

(FULL DESIGNATION OF THE PROJECT)

* The Project Agreement Numbers shall be structured as follows:

XX-NN-nnnn where **XX** is a U.S. Military Department or Defense Agency designator such as **N** for Navy, **A** for Army, **AF** for Air Force, **AR** for ARPA, etc.; **NN** is the calendar year, and **nnnn** is a sequential number.

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(At a minimum, a PA should include the above Articles. If additional topics need to be addressed, articles, annexes, or special provisions should be included as necessary and appropriate.)

ARTICLE I

INTRODUCTION

This Project Agreement (PA) is entered into pursuant to the Agreement between the Department of Defense of the United States of America (U.S. DoD) and the Ministry of Defence of the Republic of India (IN MOD) concerning Research, Development, Testing, and Evaluation Projects of (date).

ARTICLE II

DEFINITION OF TERMS AND ABBREVIATIONS

(Define only those terms used in this PA that have not been defined in the Agreement.)

ARTICLE III

OBJECTIVES

The objectives of this _____ PA are:

- a. the development of _____
_____.
- b. the improvement of _____
_____.

ARTICLE IV

SCOPE OF WORK

The following work shall be undertaken under this PA.

- a. Develop _____
_____.
- b. Evaluate _____
_____.
- c. Design, fabricate and test _____
_____.

ARTICLE V

SHARING OF TASKS

The sharing of tasks shall be as follows:

- a. The U.S. DoD will _____
_____.
- b. The Indian MOD will _____
_____.
- c. U.S. DoD and Indian MOD will jointly _____
_____.

ARTICLE VI

BREAK DOWN AND SCHEDULE OF TASKS (OPTIONAL)

(Use this format when the tasks covered under this Project may be performed using multiple phases, requiring milestones or decision points.)

The Project shall proceed according to the following phases and schedule:

<u>Phase 1</u>	<u>Start</u>	<u>End</u>
Description of Phase 1	MM/DD/YY	MM/DD/YY

(Milestone 1) (e.g., Transmittal of Feasibility Report)

<u>Phase 2</u>	<u>Start</u>	<u>End</u>
Description of Phase 2	MM/DD/YY	MM/DD/YY

(Milestone 2) (e.g., Decision to proceed to Phase 3)

<u>Phase 3</u>	<u>Start</u>	<u>End</u>
Description of Phase 3	MM/DD/YY	MM/DD/YY

(Milestone 3) (e.g., Evaluation, analysis of results)

(Add as many phases as necessary.)

The final report must be transmitted to the MAs six months before the termination date for this PA.

ARTICLE VII
MANAGEMENT

(If a PA does not require a Steering Committee, use the following format to set forth how the PA will be managed.)

Alternative 1

1. This PA shall be directed and administered on behalf of the Parties by one Project Officer (PO) from each Party. The POs are:

U.S. PO	Title/Position	_____
	Organization	_____
	Address	_____ _____ _____
IN PO	Title/Position	_____
	Organization	_____
	Address	_____ _____ _____

2. Project Offices shall be established in _____ **(name of U.S. location)** and in _____ **(name of India location)**. The POs are responsible for management of those tasks listed as national responsibilities in Article V (Sharing of Tasks) in this PA.

3. Particular Management Procedures:

(Mention only those additional management responsibilities not covered under Article IV of the Agreement.)

(If a Project requires the establishment of a Steering Committee, use the following format to set forth how the Project will be managed.)

Alternative 2

1. This PA shall be directed and administered on behalf of the Parties by an organization consisting of a Steering Committee (SC) and one Project Officer (PO) from each Party. The SC members are:

U.S. Co-Chairman	Title/Position	_____
	Organization	_____
	Address	_____ _____ _____

IN Co-Chairman	Title/Position	_____
	Organization	_____
	Address	_____ _____ _____

2. The POs are:

U.S. PO	Title/Position	_____
	Organization	_____
	Address	_____ _____ _____

IN PO	Title/Position	_____
	Organization	_____

Address

3. Particular Management Procedures:

(Mention only those additional management responsibilities not covered under Article IV of the Agreement. For instance, if a PA involving a complex scope of work and significant financial and non-financial contributions will be administered by one joint program office staffed by members from each Party (Cooperative Project Personnel (CPP)), add the following paragraph:

4.X. Either Party may assign Cooperative Project Personnel (CPP) to the JPO to assist in administering a PA. The Host Party shall provide office space and administrative support to personnel of the other Party in accordance with the host Party's normal practice. A Party's assigned personnel shall be subject to the normal procedures and regulations of the Host Party. Provisions for the personnel provided are described in Appendix A of this PA.)

ARTICLE VIII

FINANCIAL PROVISIONS

The Parties estimate that the cost of performance of the tasks under this PA shall not exceed U.S. \$.

Cooperative efforts of the Parties over and above the jointly agreed tasks set forth in the SCOPE OF WORK, SHARING OF TASKS, and FINANCIAL PROVISIONS Articles shall be subject to amendment to this PA or signature of a new PA.

(If a PA will involve the assignment of CPP, the PA shall include a provision that refers to paragraphs 5.6. - 5.8. of the Agreement, identifies which Party is sending or hosting CPP, and specifies the number of CPP to be assigned. In addition, the PA shall include the amount of financial and non-financial contributions related to CPP in one of the two alternatives below in this Article.)

(If a PA will not involve one Party contracting for the other or both Parties, and no funds will be exchanged between the Parties, use the following format for the Financial Provisions. Both financial and non-financial contributions should be included in the total U.S. DoD and IN MOD costs.)

Alternative 1

The U.S. DoD tasks shall not cost more than: _____ U.S. \$.

The IN MOD tasks shall not cost more than: _____ India rupees.

Or:

(If a PA will involve one Party contracting for the other Party or both Parties, or the Parties will transfer or exchange funds between them, use the following format for the Financial Provisions.)

Alternative 2

(Cost of performance includes Financial and Non –financial Costs.)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
IN						
U.S.						

(Using the above table and whatever description is necessary, explain and demonstrate how the PA will be funded. Identify both financial (funds) and non-financial (range time, use of equipment, etc.) contributions and identify the amount of funds to be transferred between the Parties.)

(The Financial Management Procedures Document (FMPD) should be developed by the POs and submitted to the SC (if appropriate) for approval. The FMPD should include at a minimum schedule, handling, funding levels by year, and auditing procedures for monetary contributions anticipated for this PA.)

ARTICLE IX

CLASSIFICATION

The existence of this PA and its contents is UNCLASSIFIED.

Only one of the two following possibilities must be selected:

- a. No Classified Information shall be exchanged under this PA; or**
- b. The highest level of Classified Information exchanged under this PA is: [other than unclassified (specify)].**

ARTICLE X

PRINCIPAL ORGANIZATIONS INVOLVED

(List government laboratories, research centers, and other organizations for both the United States and India)

ARTICLE XI

PROJECT EQUIPMENT

NOTES:

1. In the event that the collaborative efforts under the PA require the provision of Project Equipment to either Party, then a list of such Project Equipment must be developed in general accordance with the following table. (See also Annex C.)

Providing Party	Receiving Party	QTY	Description	Part/ Stock #	Consumables/ Non-Consumables	Approx Value

2. If jointly acquired Project Equipment is an aspect of the collaborative efforts under the PA, then terms and conditions for the disposal of such jointly acquired Project Equipment must be included in the PA.

ARTICLE XII

SPECIAL PROVISIONS

All activities of the Participants under this PA will be carried out in accordance with their national laws and regulations, including their export control laws and regulations.

ARTICLE XIII

ENTRY INTO FORCE, DURATION AND TERMINATION

This _____ PA, a Project under the Memorandum of Agreement between the Department of Defense of the United States of America and the Ministry of Defence of the Republic of India for Research, Development, Testing, and Evaluation Projects dated August/September XX, 2005 shall enter into force upon signature by the Agreement Management Agents, and shall remain in force for _____ years unless terminated by either Party. It may be extended by written agreement of the Parties.

ARTICLE XIV

ASSIGNMENT OF (INSERT NAME OF PROJECT) COOPERATIVE
PROJECT PERSONNEL

[Should it be determined that Cooperative Project Personnel will be utilized for this PA, the format at Annex B will be used and will become Appendix 1 to the PA.]

DONE, in two originals, in the English language.

For the Department of Defense
of the United States of America

Signature

Name

Title

Date

Location

For the Ministry of Defence
of India

Signature

Name

Title

Date

Location

ANNEX B

COOPERATIVE PROJECT PERSONNEL

1.0. Purpose and Scope:

1.1. This Annex establishes the conditions that shall govern the conduct of Cooperative Project Personnel (CPP). The Parent Party shall assign military members or civilian employees to the Program Office in accordance with Article IV (Management) and this Annex. CPP must be able to perform all the responsibilities assigned to them under this Agreement. Commencement of assignments shall be subject to any requirements that may be imposed by the Host Party or its government regarding acceptance of CPP, such as, but not limited to, visas and visit request documentation. The SC shall determine the length of tour for the positions at the time of initial assignment.

1.2. CPP shall be assigned to a Program Office for Project work and shall report to their designated Program Office supervisor regarding that work. The PO shall be responsible for the creation of a document describing the duties of each CPP position, which will be subject to approval by the SC. CPP shall not act as liaison officers on behalf of the Parent Party. CPP may act from time to time on behalf of their respective SC member if the latter so authorizes in writing.

1.3. CPP shall not be assigned to command or other positions that would require them to exercise responsibilities that are reserved by law or regulation to an officer or employee of the Host Party's government.

2.0. Security:

2.1. The SC shall establish the maximum level of security clearance required, if any, to permit CPP to have access to Classified Information and facilities in which Classified Information is used in accordance with the Project Security Instruction (PSI) and Classification Guide (CG). Access to Classified Information and facilities in which Classified Information is used shall be consistent with, and limited by, Article II (Objectives) and Article III (Scope of Work) of this Agreement and will be kept to the minimum required to accomplish the work assignments.

2.2. The Parent Party shall file visit requests for the CPP through prescribed channels in compliance with the Host Party's procedures. As part of the visit request procedures, the Parent Party shall cause security assurances to be filed, through its Embassy in Washington, DC, or New Delhi, India, as applicable, specifying the security clearances for the CPP being assigned.

2.3. The Host Party and Parent Party shall ensure that CPP assigned to the Program Office are aware of, and comply with, applicable laws and regulations as well as the requirements of Article IX (Controlled Unclassified Information), Article X (Visits to Establishments), Article XI

(Security), and Article XVII (Amendment, Termination, Entry into Force, and Duration) of this Agreement and the provisions of the PSI and CG. Prior to commencing assigned duties, CPP will, if required by the Host Party's government laws, regulations, policies, or procedures, sign a certification concerning the conditions and responsibilities of CPP.

2.4. CPP shall at all times be required to comply with the security and export control laws, regulations, and procedures of the Host Party's government. Any violation of security procedures by CPP during their assignment shall be reported to the Parent Party for appropriate action. CPP committing significant violations of security and export control laws, regulations, or procedures during their assignment shall be withdrawn from the Project with a view toward appropriate administrative or disciplinary action by their Parent Party.

2.5. All Classified Information made available to CPP shall be considered as Classified Information furnished to the Parent Party, and shall be subject to all provisions and safeguards provided for in Article XI (Security), the PSI, and CG.

2.6. CPP shall not have personal custody of Classified Information or Controlled Unclassified Information unless approved by the Host Party and as authorized by the Parent Party. They shall be granted access to such Information in accordance with Article IX (Controlled Unclassified Information), Article XI (Security), and the PSI during normal duty hours at the Program Office and when access is necessary to perform Project work.

2.7. CPP assigned to the Program Office shall not serve as a conduit between the Host Party and Parent Party for requests and/or transmission of Classified Information or Controlled Unclassified Information unless specifically authorized by the PSI.

3.0. Technical and Administrative Matters:

3.1. Consistent with Host Party's government laws and regulations, CPP shall be subject to the same restrictions, conditions, and privileges as Host Party personnel of comparable rank and in comparable assignments. Further, to the extent authorized by Host Party's government laws and regulations, CPP and their authorized dependents shall be accorded:

3.1.1. exemption from any Host Party's government tax upon income received from the Parent Party; and

3.1.2. exemption from any Host Party's government customs and import duties or similar charges levied on items entering the country for their official or personal use, including their baggage, household effects, and private motor vehicles.

3.2. On arrival, CPP and their dependents shall be provided briefings arranged by the Program Office about applicable laws, orders, regulations, and customs and the need to comply with them. CPP shall also be provided briefings arranged by the Program Office regarding entitlements, privileges, and obligations such as:

- 3.2.1. any medical and dental care that may be provided to CPP and their dependents at Host Party medical facilities, subject to the requirements of applicable laws and regulations, including reimbursement requirements;
 - 3.2.2. purchasing and patronage privileges at military commissaries, exchanges, theaters, and clubs for CPP and their dependents, subject to the requirements of applicable laws and regulations; and
 - 3.2.4. responsibility of CPP and their accompanying dependents to obtain motor vehicle liability insurance coverage in accordance with the laws and regulations applicable in the area where they are residing. In case of claims involving the use of private motor vehicles by CPP, the recourse shall be against such insurance.
- 3.3. The PO, through the Program Office, shall, in consultation with the CPP, establish standard operating procedures for CPP in the following areas:
- 3.3.1. working hours, including holiday schedules;
 - 3.3.2. leave authorization, consistent to the extent possible with the military and civilian personnel regulations and practices of the Host Party and Parent Party;
 - 3.3.3. dress regulations, consistent to the extent possible with the military and civilian personnel regulations and practices of the Host Party and Parent Party; and
 - 3.3.4. performance evaluations, recognizing that such evaluations will be rendered in accordance with the Parent Party's military or civilian personnel regulations and practices.
- 3.4. CPP committing an offense under the laws of the government of the Host Party or Parent Party may be withdrawn from this Project with a view toward further administrative or disciplinary action by the Parent Party. Disciplinary action, however, shall not be taken by the Host Party against CPP, nor shall the CPP exercise disciplinary powers over the Host Party's personnel. In accordance with Host Party's government laws and regulations, the Host Party shall assist the Parent Party in carrying out investigations of offenses involving CPP.
- 3.5. During their Program Office assignment, CPP shall not be placed in the following duty status or environments unless mutually decided by the SC:
- 3.5.1. areas of political sensitivity where their presence may jeopardize the interests of either the Host Party or Parent Party, or where, in the normal course of their duty, they may become involved in activities which may embarrass either Party;
 - 3.5.2. deployments in non-direct hostility situations, such as UN peacekeeping or multinational operations, or third countries; and

3.5.3. duty assignments in which direct hostilities are likely. Should a Program Office to which CPP are assigned become involved in hostilities unexpectedly, CPP assigned to that Program Office shall not be involved in the hostilities. Any such CPP approved by the SC for involvement in hostilities shall be given specific guidance as to the conditions under which the assignment shall be carried out by the appropriate authorities of the Host Party and Parent Party.

ANNEX C

INVENTORY OF PROJECT EQUIPMENT EXCHANGES

<u>Nomenclature</u>	<u>Part No./</u> <u>Model No.</u>	<u>Replacement</u> <u>Value</u>	<u>Receiving</u> <u>Party</u>	<u>Date</u> <u>Transferred</u>
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[This list will be developed for each PA requiring the exchange or loan of equipment from one Party to the other and will become an Appendix to the appropriate PA.]